

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
AT BLUEFIELD

LARRY L. KOGER,

Plaintiff,

v.

CIVIL ACTION NO. 1:08-0909

NORFOLK SOUTHERN RAILWAY  
COMPANY,

Defendant.

MEMORANDUM OPINION AND ORDER

Pending before the court are (1) plaintiff's motion in limine to bar any evidence, interrogation, or argument regarding plaintiff's alleged comparative negligence and (2) defendant's motion in limine to preclude plaintiff from referencing or arguing that defendant was solely at fault for the incident at issue. (Docs. # 84 and 98). Defendant contends that it has evidence to present regarding plaintiff's fault in the accident and that, because of this, plaintiff should not be allowed to argue that defendant was solely at fault. Plaintiff argues that, pursuant to § 45 U.S.C. § 53, defendant's violation of 49 C.F.R. § 240.305 bars the defense of comparative negligence. For reasons expressed in its Memorandum Opinion and Order of October 2, 2009, and to be expressed in the forthcoming Memorandum Opinion and Order denying plaintiff's motion for reconsideration, the court has rejected and continues to reject plaintiff's argument on this point. Plaintiff further contends that there is

evidence to rebut defendant's position that plaintiff was somehow at fault for the accident and that, therefore, defendant was solely at fault.

Determining who was at fault for the accident and to what degree is an issue for the jury to decide. Accordingly, both motions are DENIED.

The Clerk is directed to send copies of this Memorandum Opinion and Order to all counsel of record.

**IT IS SO ORDERED** this 12th day of November, 2009.

ENTER:

A handwritten signature in cursive script, reading "David A. Faber", is written over a horizontal line.

David A. Faber

Senior United States District Judge